

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 253 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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TULSIDAS NATHUBHAI

Versus

CHHABILDAS SHANKERBHAI

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Appearance:

Mr U.P. Vyas for MR BHARAT J SHELAT for Petitioner  
MR SH SANJANWALA for Respondent.

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 21/03/97

ORAL JUDGEMENT

The petitioner who is original plaintiff-landlord has questioned the legality and validity of the judgment and decree recorded in Small Cause Suit No.1560 of 1975 and confirmed in Regular Civil Appeal No.333 of 1977 by invoking the aids of section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay

Rent Act). The parties are hereinafter referred to as the landlord and tenant for the sake of convenience and brevity.

The landlord instituted the aforesaid suit for eviction on the ground of non-payment of rent against the tenant in respect of the demise premises bearing Nondh No.1810/A/2/B situated in Ward No.3 at Surat. The landlord, inter alia, contended that the standard rent of the demise premises had been fixed at Rs.10.25 ps. per month. The landlord served the tenant with a notice under section 12(2) of the Bombay Rent Act dated 12.2.73 demanding arrears of rent for more than six months and the increase in taxes. Thereafter, the suit was filed for the arrears of rent contending that the tenant was not ready and willing to pay the rent and he was a defaulter.

The suit was resisted by the tenant, inter alia, raising the dispute of standard rent. It was also contended that he was ready and willing to pay the rent as per the standard rent.

Upon appreciation of the facts and circumstances, the Trial Court found that there was no case for eviction under section 12(3)(a) or 12(3)(b) of the Bombay Rent Act. It was held that the provisions of section 12(3)(b) were attracted and the tenant was entitled to protection as he had complied with the material conditions of section 12(3)(b). It was, therefore, held by the Trial Court that the tenant was ready and willing to pay the rent and there was no default on his part. The decree refusing the possession of the demise premises on the ground of non-payment of rent under section 12(3)(b) came to be confirmed in appeal filed by the unsuccessful landlord. Hence this petition.

There are concurrent findings of facts recorded by the Trial Court and the Appellate Court. The jurisdictional sweep of a revisional court under section 29(2) of the Bombay Rent Act is very much circumscribed. The revisional court cannot interfere with the findings of fact recorded by the courts below unless perversity, illegality, misreading of evidence or miscarriage of justice is successfully pointed out. No such case is spelt out or is shown from the record. The finding of fact recorded by the Trial Court that the defendant tenant was ready and willing to pay rent and he was not a defaulter came to be confirmed on appreciation of facts by the appellate Court. This finding of fact requires no interference in a revision where the jurisdictional

parameter is very much circumscribed.

Insofar as provisions of section 12(3)(b) are concerned, it may be noted that the said provisions will apply to the following cases --

(i) where arrears of rent was for less than six months, or

(ii) where entire rent is not payable monthly;

(iii) where the dispute about standard rent and/or permitted increases has been raised within a period of one month after receipt of notice under section 12(3).

Both the courts have rightly found that the present case is governed by provisions of section 12(3)(b). A tenant who seeks protection of provisions of section 12(3)(b) before amendment which came into force in 1985 is obliged to satisfy the following conditions:

(i) On the first day of hearing of the suit for arrears on the ground of non-payment of rent or on any other day as the court may direct upon request of the party, the tenant paid the entire arrears of rent and permitted increases then due to the landlord.

(ii) tenant must continue to pay regularly during the pendency of the suit such rent and permitted increases periodically as the court may specify and the pendency of the appeal is in continuation of the suit.

The aforesaid conditions must be satisfied and they must co-exist for seeking protection against eviction on the ground of non-payment of rent under section 12(3)(b).

The tenant seeking protection under these provisions has to be vigilant and has to take steps to comply with the aforesaid conditions.

The Hon'ble Apex Court in Ganpat vs. Sashikant, AIR 1978 SC 955 has clearly held that in order to seek protection of provisions of section 12(3)(b), the tenant must comply with the conditions laid down in the said provisions. The court cannot exercise discretion in favour of the tenant who has not fulfilled the conditions. If there is statutory default or neglect on the part of the tenant, whatever may be the cause, the landlord acquires a right

under section 13(3)(b) for getting decree for possession. A tenant who is a defaulter and who failed to comply with the conditions set out in section 12(3)(b) cannot be given protection and he cannot be allowed to defeat the landlord's claim for eviction. It is unequivocally held by the Hon'ble Supreme Court in the aforesaid decision that section 12(3)(b) does not create any discretionary jurisdiction in the court.

In Mranalini B. Shah vs. B.M.Shah, AIR 1980 SC 954 the Honourable Apex Court has also expounded the relevant position of law emerging from the provisions of section 12(3)(b). It is clearly found in the said decision that payment of rent and permitted increases must be paid regularly during the pendency of the suit. The term 'regularly' is held to be mandatory and not directory. In case of monthly tenancy, the court has no discretion to treat payment made at irregular intervals as sufficient compliance. It is observed that if the tenant persistently defaults during the pendency of the suit or appeal in paying the rent, such as where he pays it at irregular intervals of 2 or 3 or 4 months - as is the case in the present case, the court has no discretion to treat what were manifestly irregular payments, as substantial compliance with the mandate of provisions of section 12(3)(b). Thus, the proposition of law enunciated by the Hon'ble Supreme Court in Ganpat Ladha (supra) has been approved and followed in Mranalini's case.

After having examined the relevant legal settings and considering the same in the backdrop of the facts, this court has no hesitation in finding that the present petition is meritless and the impugned judgment and decree refusing decree for possession are required to be confirmed and affirmed. Accordingly, this petition is dismissed with costs. Rule discharged.

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